



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 473

IN THE MATTER
OF
RUSSELL SMITH

DISPOSITION AGREEMENT

This Disposition Agreement (Agreement) is entered into between the State Ethics Commission (Commission) and Russell Smith (Smith) pursuant to §5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On June 22, 1993, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Smith. The Commission has concluded its inquiry and, on October 19, 1993, found reasonable cause to believe that Smith violated G.L. c. 268A.

The Commission and Smith now agree to the following findings of fact and conclusions of law:

1. Smith was, during the time relevant, the Chairman of the Gay Head Board of Selectmen (Selectmen). As such, Smith was a municipal employee as that term is defined in G.L. c. 268A, §1.
2. Smith's brother, Hollis Smith (Hollis), also lives in Gay Head.
3. On July 1, 1992, the federal Bureau of Alcohol, Tobacco and Firearms (ATF) executed a warrant to search Hollis's home. The search resulted in the seizure of narcotics and guns, and criminal charges being brought against Hollis.
4. The Selectmen serve as the police commissioners for the town. As such, the Selectmen participate in hiring, firing and disciplinary actions concerning police personnel and have the authority to investigate, in conjunction with the police chief, police action where necessary.
5. Shortly after the ATF search, Smith indicated to others in town, including the other two selectmen and the police chief, that he felt a certain Gay Head police officer and the Island Drug Task Force improperly initiated the action against his brother.
6. On July 13, 1992, some Gay Head residents complained at the Selectmen's meeting about the ATF search.
7. On August 10, 1992, the Selectmen met in executive session. Minutes from that meeting indicate that Smith asked the police chief for an update concerning the ATF search of Hollis's home and an explanation as to why a certain police officer was chosen to represent the town in the matter. The minutes also indicate that Smith wanted to know who issued the warrant in the case and how ATF knew there was a .222 caliber firearm in Hollis's home. According to the minutes, the other two selectmen felt that it was not the selectmen's place to question the police concerning the validity of the search. The discussion therefore ended.
8. After the meeting, town counsel told Smith there was a conflict of interest if he participated in matters involving the ATF search. Smith was advised to avoid any matter involving the search warrant executed at Hollis's home. Smith agreed to have no further involvement. The selectmen took no further action concerning

the matter.

9. Except as otherwise permitted in that section, §19 of G.L. c. 268A prohibits a municipal employee from participating as such an employee in a particular matter in which to his knowledge an immediate family has a financial interest.^{1/} The potential or actual controversy concerning the ATF search and any subsequent action the selectmen acting as police commissioners may have had to take concerning their police officers' involvement in that action was a particular matter.^{2/} As Hollis was facing pending criminal charges as a result of the ATF search, he had a financial interest in the Selectmen's actions concerning the search because his pending criminal court case could have been affected (either by discipline taken against the officer involved or the questioning of the validity of the process). At all relevant times, Smith was aware of his brother's financial interest. Smith participated^{3/} in the matter by questioning, as a selectman, the ATF search and process which resulted in his brother facing criminal charges.

10. By acting as described above, Smith participated as a selectman in a particular matter in which to his knowledge his brother had a financial interest. Therefore, Smith violated §19.

In view of the foregoing violations of G.L. c. 268A by Smith, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Smith:

- (1) that Smith pay to the Commission the sum of five hundred dollars (\$500) as a civil penalty for violating G.L. c. 268A, §19;
- (2) that Smith will act in conformance with requirements of G.L. c. 268A in his future conduct as a municipal employee; and
- (3) that Smith waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

Date: October 19, 1993

^{1/}None of the exceptions in §19 is relevant here.

^{2/}G.L. c. 268A, §1(k) defines "particular matter" as any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property.

^{3/}"Participate," participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, §1(j).